

COMMONWEALTH OF MASSACHUSETTS**APPELLATE TAX BOARD****STEVEN J. LACOSTE****v.****COMMISSIONER OF REVENUE**

Docket No. C331945

Promulgated:
August 2, 2017

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 62C, § 39 from the refusal of the appellee, the Commissioner of Revenue ("Commissioner"), to abate sales taxes assessed against the appellant, Steven J. Lacoste, in connection with his purchase of a motor vehicle.

Commissioner Scharaffa heard this appeal and was joined by Chairman Hammond, and Commissioners Rose, Chmielinski and Good in the decision for the appellee.

These findings of fact and report are made pursuant to the appellant's request under G.L. c. 58A, § 13 and 831 C.M.R. 1.32.

Steven J. Lacoste, pro se, for the appellant.

Timothy R. Stille, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On August 22, 2014, the appellant purchased a 2015 Volkswagen GTI ("GTI") from a Massachusetts dealer for \$35,250 and paid sales tax in the amount of \$1,949.63.¹ On May 13, 2015, the appellant traded in the GTI for a 2014 Chevrolet Impala ("Impala"), which he purchased from a different Massachusetts dealer. The Impala's purchase price was \$20,297 and the dealer gave the appellant a trade-in credit of \$24,400 for the GTI. As the trade-in credit exceeded the purchase price of the Impala, the appellant owed and paid no sales tax on his purchase of the Impala.

The appellant believed that the application of the sales tax to his purchase of the Impala was not correct. More specifically, he asserted that he was entitled to a refund of the difference between the sales tax associated with his purchase of the GTI and what would have been due, absent the trade-in credit, in connection with his purchase of the Impala.² Thus, the appellant filed an Application for

¹ The appellant traded in a vehicle at the time of the purchase and was given a trade-in credit of \$18,000. Consequently, the GTI's taxable sales price was reduced to \$17,250. See 830 CMR 64H.25.1(5)(c)1.

² This difference, \$681.07, is somewhat less than the appellant's requested abatement of \$700.

Abatement, Form CA-6, on December 28, 2015, and requested a hearing with the Department of Revenue's Office of Appeals, which was conducted on June 29, 2016. The Office of Appeals issued a determination letter on July 14, 2016, affirming that the sales tax on the appellant's purchase of the Impala had been calculated correctly. The Commissioner therefore denied the appellant's abatement application by Notice of Abatement Determination, also dated July 14, 2016. The appellant subsequently filed a Petition with the Board on September 12, 2016. Based on the foregoing, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

Given the undisputed facts of the appeal and application of relevant law, discussed below, the Board found and ruled that the appellant was not entitled to an abatement of sales tax. Accordingly, the Board issued a decision for the appellee in this appeal.

OPINION

Massachusetts imposes a sales tax on "sales at retail in the commonwealth, by any vendor, of tangible personal property. . . ." G.L. c. 64H, § 2. This excise, calculated "at the rate of 6.25 percent of the gross receipts of the vendor," is typically paid by the vendor to the

Commissioner. **Id.** With regard to the sale of motor vehicles, the excise is "paid by the purchaser to the registrar of motor vehicles. . . ." G.L. c. 64H, § 3(c).

General Laws, chapter 64H, section 26 provides for imposition of the sales tax "only on the difference between the sales price of [a] motor vehicle or trailer purchased and the amount allowed on [a] motor vehicle or trailer traded in on such purchase." Pursuant to Massachusetts regulations,

[i]f the sale is by a Massachusetts dealer in the regular course of business and the purchaser either previously paid a tax on the vehicle traded-in, or is exempt from tax on the vehicle traded-in under M.G.L. c. 64H or c. 64I, and 830 CMR 64H.25.1(5), (7) or (8), the sales tax is computed on the sales price, reduced by any amount credited towards the sales price by reason of a trade-in.

830 CMR 64H.25.1(5)(c)1

There is no dispute that the appellant purchased the Impala from a Massachusetts dealer in the regular course of business and that he had previously paid a sales tax on the GTI. The taxable sales price of the Impala was therefore reduced to zero because the trade-in credit for the GTI exceeded its purchase price. The Board found and ruled that this calculation reflected a correct application of the sales tax.

The Board further found that the appellant's claim to an abatement, the basis for which was not clear, was without merit. There is no statutory or regulatory basis for the appellant's claim, which would amount to a full refund of the sales tax he had paid on his purchase of the GTI. Indeed, the appellant would have been entitled to the abatement sought only if he had returned the GTI to the dealer from whom it was purchased, pursuant to a rescission of contract, within 180 days of the date of its sale. G.L. c. 64H, §1. Instead, the appellant traded the GTI in at another dealer approximately nine months after its purchase and received an appropriate reduction in the taxable sales price of the Impala.

An appellant bears the burden of proving his or her right, as a matter of law, to an abatement. See ***M & T Charters, Inc. v. Commissioner of Revenue***, 404 Mass. 137, 140 (1989); ***Stone v. State Tax Commission***, 363 Mass. 64, 65-66 (1973). Having considered the undisputed facts and evidence of record, the Board found and ruled that the appellant failed to prove his right to an abatement.

Accordingly, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: _____
Clerk of the Board